

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

NATHANIEL CLARK,)	
)	
Plaintiff,)	CIVIL ACTION FILE NO.:
)	1:22-CV-02748-CAP-RDC
v.)	
)	
CITY OF FOREST PARK, GA;)	
LATRESA AKINS-WELLS, <i>in her</i>)	
<i>individual capacity</i>)	
)	
Defendants.)	

**DEFENDANTS' CONSENT MOTION TO STAY ALL DISCOVERY
AND INCORPORATED MEMORANDUM OF LAW IN SUPPORT**

COME NOW, defendants City of Forest Park, Georgia and Latresa Akins-Wells, in her individual capacity, (collectively, “defendants”), by and through their undersigned counsel, and hereby respectfully move this Court for an order staying all discovery, including any pre-discovery deadlines in this action, pursuant to Federal Rule of Civil Procedure and Local Rules 16.1, 16.2, and 26.1, pending a final resolution of both of defendants’ motions to dismiss. (Docs. 8–10.) Counsel for all parties have conferred, and plaintiff consents to the stay requested in this motion. As grounds for this motion, defendants show the following:

I. INTRODUCTION

Plaintiff initiated this action on November 1, 2021 in the Superior Court of Clayton County. (Doc. 1-2, pp.2-28.) Defendants both answered and filed separate motions to dismiss plaintiff's complaint. (Doc. 1-2, pp.29-67, 68-89, 93-102.) On February 7, 2022, plaintiff amended his complaint. (Doc. 4.) Both defendants again answered (Docs. 5 – 6) and moved to dismiss all claims. (Doc. 1-2, pp. 218-29, 255-71.) On June 15, 2022, plaintiff filed his second amended complaint.

On July 13, 2022, defendants jointly removed the case to this Court. (Doc. 1.) Subsequently, defendants both filed separate motions to dismiss plaintiff's second complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. (Docs. 8–10.) On August 3, 2022, plaintiff filed responses opposing defendants' motions. (Docs. 12–13.) Defendants' having both timely filed their reply briefs, their motions are now fully briefed and ripe for review. (Docs. 18–19.)

Defendants' motions to dismiss are dispositive of all claims in this action and there is no need for any discovery in order for the Court to rule on the issues therein. (Docs. 8–10.) Therefore, defendants respectfully request that the Court enter an order staying all discovery deadlines, including disclosures and planning conferences pursuant to FED. R. CIV. P. 26 and L.R. 16.1-16.2 and 26.1, in this action pending its resolution of the motion to dismiss.

II. ARGUMENT AND CITATION OF AUTHORITY

Rule 26(d) of the Federal Rules of Civil Procedure provides the Court broad discretion to alter the sequence of discovery “for the parties’ and witnesses’ convenience and in the interests of justice.” Fed. R. Civ. P. 26(d); *see also Panola Land Buyers Ass’n v. Shuman*, 762 F.2d 1550, 1560 (11th Cir. 1985) (“[The Court] has broad discretion to stay discovery pending decision on a dispositive motion.”).

Here, in the interests of efficiency and justice, defendants respectfully submit that this Court should exercise its broad discretion under Rule 26 to stay all discovery, including pre-discovery deadlines, in this action and relieve the parties from having to expend any time and resources on discovery when such may be rendered moot by the Court’s ruling on defendants’ motions to dismiss. Plaintiff will not be prejudiced by such a stay because this case is still in its early stages. *See Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997) (“Facial challenges to the legal sufficiency of the claim or defense, such as a motion to dismiss based on failure to state a claim for relief, should, however, be resolved before discovery begins.” (footnote omitted)); *Patterson v. United States Postal Serv.*, 901 F.2d 927, 929 (11th Cir. 1990) (trial court properly stayed discovery pending resolution of motion to dismiss). “[N]either the parties nor the court have any need for discovery before the court rules on the motion.” *Chudasama*, 123 F.3d

at 1367; *see also Favors v. Select Portfolio Servicing, Inc.*, No.: 3:14-cv-190-TCB, 2015 WL 11718112, at *2 (N.D. Ga. Mar. 11, 2015) (granting stay of all pretrial deadlines).

Accordingly, because defendants' motions to dismiss are dispositive of all claims in this action, an order staying all discovery, including pre-discovery deadlines, will protect the parties from expending time, effort and resources on potentially irrelevant claims or issues and unnecessary filings should the motion be granted. If the motions are not granted in their entirety, defendants respectfully request that the deadlines for the Rule 26(f) conference, submission of the joint preliminary report and discovery plan, and initial disclosures be as follows:

- Rule 26(f) conference within sixteen (16) days after the Court's ruling on both defendants' motions to dismiss; and
- Joint preliminary report and discovery plan within thirty (30) days after the Court's ruling on both defendants' motions to dismiss; and
- Initial disclosures within thirty (30) days after the Court's ruling on both defendants' motions to dismiss.

III. CONCLUSION

For the foregoing reasons, defendants respectfully request that the Court grant this motion and stay all discovery, including pre-discovery deadlines in this matter

pending the Court's consideration of and ruling on defendants' motions to dismiss.

(Docs. 8–10.) A proposed order is attached for the Court's convenience.

Respectfully submitted, this 12th day of September, 2022.

FREEMAN MATHIS & GARY, LLP

/s/ Michael M. Hill

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CERTIFICATE OF COMPLIANCE

I hereby certify that the within and foregoing **DEFENDANTS' CONSENT MOTION TO STAY ALL DISCOVERY AND INCORPORATED MEMORANDUM OF LAW IN SUPPORT** has been prepared in compliance with Local Rule 5.1 by using Times New Roman, 14-point font.

This 12th day of September, 2022.

/s/ Michael M. Hill

Michael M. Hill

Georgia Bar No. 770486

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the within and foregoing **DEFENDANTS' CONSENT MOTION TO STAY ALL DISCOVERY AND INCORPORATED MEMORANDUM OF LAW IN SUPPORT** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorney of record:

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This 12th day of September, 2022.

/s/ Michael M. Hill

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